

# SENATE BILL REPORT

## SB 5401

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As Reported by Senate Committee On:  
Natural Resources, Ocean & Recreation, February 19, 2009

**Title:** An act relating to habitat open space.

**Brief Description:** Expanding the riparian open space program to include lands that contain habitat of species that are federally listed as threatened or endangered.

**Sponsors:** Senators Morton, Jacobsen, Stevens, Ranker, Hatfield, Roach and Kline.

**Brief History:**

**Committee Activity:** Natural Resources, Ocean & Recreation: 2/04/09, 2/19/09 [DPS].

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### SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

**Majority Report:** That Substitute Senate Bill No. 5401 be substituted therefor, and the substitute bill do pass.

Signed by Senators Jacobsen, Chair; Ranker, Vice Chair; Morton, Ranking Minority Member; Fraser, Hargrove, Hatfield, Stevens and Swecker.

**Staff:** Sherry McNamara (786-7402)

**Background:** The Legislature added the Riparian Open Space (ROS) Program to the Forest Practices Act in 1999. The ROS program provides landowners compensation for lands within unconfined avulsing channel migration zones that cannot be harvested due to the Forest Practices rules. The Department of Natural Resources (DNR) is directed to purchase qualifying land in order to manage that land for ecological protection or fisheries enhancement. Lands may be purchased either as fee land or as a perpetual conservation easement. The DNR may retain and manage these lands or transfer the land or easement to another state agency, a local governmental agency, or a private non-profit nature conservancy program.

Since 2001 the DNR has purchased 583 acres of qualifying channel migration zone (CMZ) lands for a total value of \$1,470,000. An unconfined avulsing CMZ is the area within which the active channel of an unconfined avulsing stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Summary of Bill (Recommended Substitute):** The Forest Practices Board (Board) must establish by rule a program for the acquisition of riparian open space and critical habitat for threatened or endangered species. Acquisition must be a conservation easement.

Lands eligible for acquisition are forest lands within unconfined CMZ or forest lands containing critical habitat for threatened or endangered species as designated by the Board.

**EFFECT OF CHANGES MADE BY NATURAL RESOURCES, OCEAN & RECREATION COMMITTEE (Recommended Substitute):** The recommended substitute does the following:

- replaces "unconfined avulsing channel migration zone" with "unconfined channel migration zone;"
- removes the term "avulsing;"
- replaces "habitat of federally listed species on private forest lands" with "critical habitat for threatened or endangered species as designated by the Board;"
- adds "critical habitat for threatened or endangered species" to the current exemption for compensating tax under RCW 84.33 and 84.34; and
- makes grammatical corrections.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: The Spotted Owl Working Group has been meeting over the past year to reach a mediated agreement in the ongoing litigation. The group worked collaboratively to develop incentives for private landowners to support and protect endangered and threatened species. This bill uses a market-based approach to acquire habitat. For willing sellers it uses a fair market appraisal to compensate landowners for critical habitat areas. The ROS program has been highly effective and this is an expansion of that program.

**Persons Testifying:** PRO: Nina Carter, Seattle Audubon and Audubon Washington; Mark Doumit, Washington Forest Protection Association; Robert Meier, Rayonier; Ed Owens, Hunters Heritage Council; Heath Packard, DNR; David Whipple, Washington Department of Fish and Wildlife.